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L A W Y E R S

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Attorneys for USACM Liquidating Trust

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA Commercial Mortgage Company,

USA Capital Realty Advisors, LLC,¹

USA Capital Diversified Trust Deed Fund,
LLC,

USA Capital First Trust Deed Fund, LLC,²

USA Securities, LLC,³

Debtors.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR¹
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR²
Case No. BK-S-06-10729-LBR³

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**DECLARATION OF EDWARD M.
BURR IN SUPPORT OF NUNC PRO
TUNC MOTION TO FURTHER
EXTEND DEADLINE TO FILE
OBJECTION TO ALLOWANCE OF
CLAIMS; AND CERTIFICATE OF
SERVICE**

Date: November 18, 2008

Time: 9:30 a.m.

I Edward M. Burr, hereby declare under penalty of perjury that:

I am a principal with Sierra Consulting Group, LLC ("Sierra").

¹ This bankruptcy case was closed on September 23, 2008.

² This bankruptcy case was closed on October 12, 2007.

³ This bankruptcy case was closed on December 26, 2007.

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1 I submit this declaration on behalf of the Nunc Pro Tunc Motion to Further Extend
2 Deadline to File Objection to Allowance of Claims (the "Motion") [DE 6582] filed by the
3 USACM Liquidating Trust (the "USACM Trust"), as successor to USA Commercial
4 Mortgage Company ("USACM").

5 Sierra previously served as financial adviser to the Official Committee of
6 Unsecured Creditors of USA Commercial Mortgage Company ("Committee").

7 I assisted the Committee in analyzing facts concerning these jointly administered
8 bankruptcy cases, including scheduled liabilities and proofs of claim. The Committee
9 ceased to exist on March 12, 2007, the Effective Date of the Debtors' Third Amended
10 Joint Chapter 11 Plan of Reorganization ("Plan"), and I am now assisting the USACM
11 Liquidating Trust ("USACM Trust") created under the Plan.

12 I make the following declaration based upon my personal knowledge, and upon the
13 records of the Debtors and the USACM Trust described in this declaration.

14 I understand that under the Plan as modified by the Confirmation Order, the
15 deadline for interested parties to object to Allowance of Claims and Equity Interests was
16 90 days after the Effective Date, or June 10, 2007. That deadline was further extended to
17 October 9, 2007 by a June 29, 2007 order [DE 4097] after a hearing held on June 22, 2007.
18 The deadline was further extended to October 15, 2007 by a bridge order that was
19 approved at a hearing held on August 23, 2007 [DE 4625]. On October 11, 2007, the
20 Court entered an order [DE 4971] extending the deadline to February 12, 2008. On
21 January 22, 2008, the Court entered an order [DE 5709] extending the deadline to June
22 12, 2008. On May 13, 2008, the Court entered an order [DE 6347] extending the deadline
23 to October 10, 2008.

24 To date there have been seven administrative claims filed totaling \$2,016,499.08;
25 103 priority claims filed totaling \$7,751,955.91; 1,676 secured claims filed totaling
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\$297,052,436.44; 1232 unsecured claims filed totaling \$627,644,519.30; and 79 unknown claims filed totaling \$649,390.57. Additional claims were scheduled by Debtors.

To date, the Trust has filed:

- Objections to 1667 secured claims that have been sustained and reclassified as unsecured in aggregate of \$296,160,362.79.
- Objections to 76 priority claims that have been sustained and reclassified as unsecured in aggregate of \$5,122,243.
- One objection to the status of an administrative claim totaling \$14,248 that has been sustained and reclassified as unsecured.
- Objections to 66 “Wrong Debtor” claims in the amount of \$12,098,062. All but one of those objections were sustained or a stipulation withdrawing the subject claim was approved;
- Objections to three claims not enforceable against USACM in the amount of \$75,503,580; one of these claims totaling \$12,841,680 remains unresolved.
- Objections to 147 claims for lack of documentation in the amount of \$19,708,808; 23 of these objections to claims totaling \$1,920,750 were withdrawn due to claimants sending in sufficient supporting document and 124 objections were sustained totaling \$17,788,058.
- Objections to 34 claims on miscellaneous grounds in the amount of \$39,394,064. Two of these objections were sustained totaling \$3,502,383; 17 objections have stipulated withdrawals totaling \$4,884,078; 5 claims totaling \$6,416,532 have orders allowing the claim; and ten objections totaling \$24,591,071 are unresolved.
- A total of 779 objections to Direct Lenders claims in the amount of \$59,688,216, principally on loans paid in full by the borrowers. The Court

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1 has sustained these objections or the claimants have agreed that they are not
2 making a claim based upon the paid loan in question.

- 3 • A stipulation has been executed and an order signed which provides for the
4 disallowance of the Spectrum and Weddell proofs of claim in the amount of
5 \$125,000,000.

6 The Trust prosecuted objections to claims, including the Loans known as Hasley
7 Canyon; Fiesta Beaumont \$2.4 million; Ashby Financial Company \$7,200,000; Glendale
8 Tower Partners, LLC; Golden State Investments II; 5252 Orange, LLC; Midvale Market
9 Place, LLC; Urban Housing Alliance – 435 Lofts Loan; Boise/Gowen 93, LLC; LCG
10 Gilroy, LLC; J Jireh's Corporation; One Point Street, LLC – HFA North Yonkers; Goss
11 Road Loan; Elizabeth May Real Estate Loan; Slade Development; Wasco Investments,
12 LLC; I-40 Gateway West, LLC 2nd; Cottonwood Hills, LLC; Standard Property
13 Development, LLC; and Palm Springs Marquis Hotel. The Trust has other adversary
14 proceedings pending that constitute claims objections.

15 Further, as the Trust has received information from claimants, it has entered into
16 stipulations for the allowance and disallowance of priority and unsecured claims.
17 Conversely, some claimants have stipulated to either withdraw their claims or have them
18 reclassified as unsecured claims upon discussion with the USACM Trust's counsel.

19 The remaining direct lender claims relate to loans that (1) fully performed, but
20 involve diverted principal; (2) partially performed; (3) are non-performing or still
21 outstanding. The extent to which those loans perform and/or the direct lenders may be
22 compensated from the sale of collateral securing the loans has a major impact on the
23 amount of the claims. The Trustee is handling these claims on a loan by loan basis.

24 Not all of the claims objections can be resolved through motions. The Court has
25 ordered that the Trust's objection to claim 1366 of Los Valles Land & Golf, LLC be
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1 consolidated with a related adversary proceeding filed by the Trust against Los Valles and
2 its guarantor, Dan S. Palmer, Jr.

3 When all of the direct lender claims are sorted on a loan by loan basis, the USAM
4 Trust will then work through the paid loans to see if there is a valid basis for a claim, and
5 if so, in what amount. The USACM Trust is trying not to file an objection to any claim on
6 a particular direct loan until it is prepared to meet and confer with all of the claimants on
7 that loan under the alternative dispute resolution mechanism provided by the Plan.

8 I make this declaration under penalty of perjury of the laws of the United States of
9 America on October 23, 2008.

10 By /s/ Edward M. Burr
11 Edward M. Burr

12 Copy of the foregoing served on October
13 23, 2008, via e-mail to all parties listed
14 on the Post Effective Date Service List
15 on file with this Court:

16 /s/ Renee Creswell
17 Renee Creswell
18 Lewis and Roca LLP
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